

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EDWARD T. FITZWATER, et al.,

Plaintiff(s),

vs.

BANK OF AMERICA, N.A.,

Defendant(s).

Case No. 2:15-cv-00825-GMN-NJK

ORDER

(Docket No. 13)

Pending before the Court is Plaintiffs' motion to compel. Docket No. 13. Defendant filed an response. Docket No. 19. No reply was filed. *See* Docket. The Court finds that this motion is appropriately resolved without oral argument. *See* Local Rule 78-2.

I. BACKGROUND

On June 11, 2014, Plaintiffs filed suit in Clark County District Court alleging breach of contract, breach of implied covenant of good faith and fair dealing, and fraud. Docket No. 1-2. These claims arise from the alleged actions of Defendant relating to a mortgage loan on Plaintiffs' Las Vegas home. *Id.*, at ¶¶ 1-10. Defendant removed the action to federal court on May 1, 2015, invoking diversity jurisdiction. Docket No. 1. On May 11, 2015, Plaintiffs filed the pending motion to compel regarding discovery requests that were served prior to removal. Docket No. 13.

II. ANALYSIS

The Court's initial inquiry regarding a motion to compel is whether the movant made adequate meet and confer efforts. Federal Rule of Civil Procedure 37(a)(1) requires that a motion

1 to compel discovery “must include a certification that the movant has in good faith conferred or
 2 attempted to confer” with the non-responsive party. Similarly, Local Rule 26-7(b) provides that
 3 “[d]iscovery motions will not be considered unless a statement of the movant is attached thereto
 4 certifying that, after personal consultation and sincere effort to do so, the parties have not been able
 5 to resolve the matter without Court action.”

6 The case law in this District is clear that “personal consultation” means the movant must
 7 “personally engage in two-way communication with the nonresponding party to meaningfully discuss
 8 each contested discovery dispute in a genuine effort to avoid judicial intervention.” *Shuffle Master,*
 9 *Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166, 171-72 (D. Nev. 1996). This obligation
 10 “promote[s] a frank exchange between counsel to resolve issues by agreement or to at least narrow
 11 and focus matters in controversy before judicial resolution is sought.” *Nevada Power v. Monsanto*,
 12 151 F.R.D. 118, 120 (D. Nev.1993). To meet this obligation, parties must “treat the informal
 13 negotiation process as a substitute for, and not simply a formal prerequisite to, judicial review of
 14 discovery disputes.” *Id.* This is done when the parties “present to each other the merits of their
 15 respective positions with the same candor, *specificity*, and support during the informal negotiations
 16 as during the briefing of discovery motions.” *Id.* (emphasis added). “Only after all the cards have
 17 been laid on the table, and a party has meaningfully assessed the relative strengths and weaknesses
 18 of its position in light of all available information, can there be a ‘sincere effort’ to resolve the
 19 matter.” *Id.* To ensure that parties comply with these requirements, movants must file certifications
 20 that “accurately and specifically convey to the court who, where, how, and when the respective
 21 parties attempted to personally resolve the discovery dispute.” *Shuffle Master*, 170 F.R.D. at 170.

22 The Court has reviewed the certification of counsel. Docket No. 13, Fitzwater Decl. at ¶¶ 6-
 23 8. The parties engaged in a telephonic conference on April 28, 2015. *Id.*, at ¶¶ 6-7. After that
 24 telephonic conference on April 28, 2015, the case was removed to this Court. Docket No. 1. It
 25 appears from the certification that when the parties met on April 28, 2015, for a meet and confer they
 26 did not “personally engage in two-way communication with the nonresponding party to meaningfully
 27 discuss *each contested discovery dispute* in a genuine effort to avoid judicial intervention.” *Shuffle*
 28 *Master*, 170 F.R.D. at 171-72 (emphasis added). In its response, Defendant argues that “discovery

1 requests filed in state court before removal are no longer viable pursuant to the federal rules.”
2 Docket No. 19, at 2. Defendant further asserts that Plaintiffs’ motion to compel is premature because
3 the parties have not held a Rule 16(f) conference. *Id.*, at 2. Notably, Plaintiffs’ counsel’s
4 certification does not state that the parties specifically addressed the status of discovery requests
5 served prior to removal. The movant, therefore, has not certified that the parties engaged in an
6 adequate meet and confer for the purpose of this motion.¹ Accordingly, the motion to compel
7 (Docket No. 13) is hereby **DENIED** without prejudice.

8 **III. CONCLUSION**

9 For the reasons discussed above, Plaintiffs’ motion to compel (Docket No. 13) is hereby
10 **DENIED** without prejudice. The parties are hereby **ORDERED** to engage in a Rule 26(f)
11 conference and submit a stipulated discovery plan no later than July 17, 2015.

12 IT IS SO ORDERED.

13 DATED: July 7, 2015

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NANCY J. KOPPE
United States Magistrate Judge
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27 ¹ The Court also notes that Plaintiffs’ counsel’s certification states that the parties conducted
28 a Nevada Rule of Civil Procedure 2.34 conference, rather than a Federal Rule of Civil Procedure
26(f) conference.